

Gordon



Comptroller General
of the United States

120557

Washington, D.C. 20548

Decision

Matter of: Wackenhut Services, Inc.

File: B-255781.3

Date: July 10, 1995

Richard J. Webber, Esq., and Helen L. Gemmill, Esq., Arent Fox Kintner Plotkin & Kahn, for the protester.
James J. Regan, Esq., and John E. McCarthy, Jr., Esq., Crowell & Moring, for Am-Pro Protective Agency, Inc., an interested party.
Mary H. Egger, Esq., Gena E. Cadieux, Esq., and Prentis Cook, Jr., Esq., Department of Energy, for the agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably downgraded proposal's technical rating due to concern about the negative impact of the offeror's proposal to pay employees the minimum wages permitted under governing wage determinations.
2. Selection of higher-priced, higher-rated proposal is unobjectionable where based on a cost/technical tradeoff analysis that is reasonable and consistent with the solicitation evaluation criteria.

DECISION

Wackenhut Services, Inc. protests the award of a contract to Am-Pro Protective Agency, Inc. under request for proposals (RFP) No. DE-RP01-93SA10165, issued by the Department of Energy (DOE) for guard services. Wackenhut contends that the agency's evaluation of proposals lacked a reasonable basis and that the agency unjustifiably selected a higher-priced proposal rather than Wackenhut's.

We deny the protest.

The agency issued the RFP on September 30, 1993, for a contract to operate, manage, train, and maintain an unarmed, uniformed protective force for Department of Energy facilities in Washington, D.C. and Maryland. The RFP anticipated award of a cost-plus-award-fee contract for a base period of 3 years, with one 2-year option.

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Each offeror was to submit a technical proposal, a management proposal, and a cost proposal. The solicitation provided that in the source selection the agency would attach significantly greater importance to the technical proposal than to the management proposal, and greater importance to the management proposal than to the cost proposal.

Both Wackenhut and Am-Pro submitted proposals which were determined to be in the competitive range. Technical and cost issues were raised with the offerors during several rounds of discussions between June and October 1994. Best and final offers (BAFO) were received on December 19, 1994. The source evaluation board (SEB) submitted its final report to the source selection official (SSO) in March 1995. In that report, the SEB found that Wackenhut's proposal had a lower probable cost (\$33.05 million vs. \$36.95 million) and a higher technical/management score (703 vs. 675 points) than Am-Pro's.

The SSO independently reviewed the proposals and the evaluation documentation and determined that Wackenhut's technical/management score should be lowered in one area and Am-Pro's should be raised in another;¹ he did not disagree with the SEB's calculation of the proposals' probable cost. As a result of this reevaluation, although the probable cost of Wackenhut's proposal remained lower than Am-Pro's, the proposal was now lower rated technically than Am-Pro's (698.5 vs. 735 points). This required the SSO to consider whether the technical superiority of Am-Pro's proposal justified paying the cost premium. For reasons discussed below, he determined that it did, and the agency awarded a contract to Am-Pro on March 30, 1995.

The gravamen of the protest concerns the decrease that the SSO made in Wackenhut's technical score, and we therefore present the relevant background in some detail here. During discussions, DOE had questioned the realism of certain cost figures proffered by Wackenhut, including labor costs and indirect costs, as well as Wackenhut's assumed attrition rate for guards, which the agency indicated was unrealistically low. The agency noted that Wackenhut was proposing to set the starting labor rate for guards at the wage determination rate established by the Department of Labor (DOL). The agency had concern that Wackenhut would not be able to retain qualified guards at the DOL wage determination rate, which would lead to high attrition, which, in turn, would both impose associated costs on the agency and hurt Wackenhut's performance.

¹We note that the SSO also raised Wackenhut's technical score in one area.

In its BAFO, Wackenhut proposed a substantial number of "ceilings," two of which are at issue in the protest. First, Wackenhut offered to cap the starting wages for guards at the rates identified in its proposal (essentially the then-current DOL wage determination rates) except to comply with any subsequent DOL wage determination establishing a higher rate. Second, Wackenhut proposed to absorb the costs that it might incur due to attrition in excess of 15 percent annually, rather than seeking reimbursement from the agency for those costs.

In light of the caps, the SEB did not adjust Wackenhut's probable cost upwards. Although also leaving Wackenhut's technical evaluation unchanged, the SEB expressed concern that, in offering caps in so many aspects of its proposal, Wackenhut might have "paint[ed] itself into a corner" and might not be able to retain qualified personnel.

In his review, the SSO determined that "the cumulative effect of [the caps] may significantly impact [Wackenhut's] ability to maintain an acceptable level of performance within the terms of the proposed contract." He viewed this as a "major weakness" and reduced the score assigned to its technical proposal on that basis.

Wackenhut contends that the SSO acted unreasonably in reversing the SEB on this point because (1) the proposed cost and attrition ceilings are realistic and therefore unlikely to be exceeded, (2) the cost ceilings and agreement to absorb excess attrition costs fully protected the government's interest in the event that the ceilings were exceeded, and (3) the agency never indicated during discussions that ceilings could raise concern as to the technical evaluation (as opposed to the calculation of probable cost).

The evaluation of technical proposals is primarily the responsibility of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation

criteria and applicable statutes and regulations.²
Honolulu Marine, Inc., B-245329, Dec. 27, 1991, 91-2 CPD
 ¶ 586.

Here, the agency (both the SSO and the SEB) had serious concern about the possible impact on performance of Wackenhut's stated intent to pay security personnel at the DOE facilities the minimum wage permitted under the DOL wage determination.³ The agency believed that keeping wage rates at DOL wage determination levels would risk unacceptable attrition, which would directly affect the quality of performance. In DOE's view, the risk to performance goes beyond the limited attrition-related costs that Wackenhut agreed to absorb.⁴ The agency points in this regard both to security-related concerns arising from high turnover of personnel in sensitive positions and to the costs that the agency would have to bear in performing required security checks on new personnel.

²Where, as here, a source selection official reaches a conclusion different from that of lower-level evaluators, we consider the rationality and consistency with the evaluation criteria of the SSO's conclusion, not that of the subordinates. Calspan Corp., B-258441, Jan. 19, 1995, 95-1 CPD ¶ 28. The source selection official is not bound by the recommendations or evaluation judgments of lower-level evaluators. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

³While Wackenhut correctly notes that it proposed a tiered structure permitting wage increases for more senior guards, that structure does not bring wages significantly above the minimum DOL rate, even for the most senior guards. In fact, Wackenhut's proposed maximum rate (that is, the rate for a guard with maximum experience) is lower than Am-Pro's proposed minimum rate for a guard with no experience.

⁴Wackenhut argues that the agency failed to alert the protester during discussions to the concern that an acceptably high attrition rate could have an impact on the contractor's performance. Agencies are not required to conduct all-encompassing discussions or to "spoon-feed" an offeror through exhaustive explanation of concerns about a proposal; the requirement is only that the discussions lead the offeror into the areas of their proposals which required amplification or correction. Medland Controls, Inc., B-255204; B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260. Here, while the issue of the attrition rate may have been discussed only in the context of the cost proposal, raising the issue in that context adequately led Wackenhut into the area of the agency's concern.

The protester contends that paying guards the minimum DOL wage determination rate will not cause high attrition. Wackenhut points out that the DOL rate is meant to reflect the prevailing rate in the area; that Wackenhut is currently paying that rate on other contracts, without causing high attrition; and that Am-Pro is currently paying its guards that rate on the present contract.

The agency responds that, due to the rigorous requirements of the work at issue in this procurement, particularly the security clearance requirements, guards working at the DOE facilities are "highly marketable" and therefore are generally paid in excess of the DOL wage determination rate, even if that rate is generally the "prevailing" one in the area for this type of work. Specifically, Am-Pro paid the guards performing under the predecessor contract at a premium well above the DOL rate, and proposed a similar premium in its proposal here.⁵ Because the agency believes that the unique requirements of DOE guard services will compel the contractor to pay wages above the DOL rate in order to retain guards for this contract, the agency discounts the significance of success Wackenhut may have had retaining guards while paying that rate under other contracts.

In the protester's view, the agency was effectively ignoring Wackenhut's proposed caps without a valid basis to doubt their efficacy. The protester points to cases in which our Office has stated that cost caps protect the government's interest by shifting the risk to the offeror, and has found that it is improper for agencies to ignore the caps in calculating a proposal's probable costs, unless there is a reasonable basis to find that the caps can be circumvented or will otherwise be ineffective. See, e.g., BNF Technologies, Inc., B-254953.3, Mar. 14, 1994, 94-1 CPD ¶ 274. We do not understand DOE to be challenging the effectiveness of Wackenhut's proposed cost caps, however, and the agency's concern is actually premised on the assumption that Wackenhut will keep wages at the cap and that doing so will negatively affect performance. The agency thus did not treat as ineffective the cap on labor rates.

The agency treated the "cap" on attrition, however, as qualitatively different from the cost cap, and we consider that different treatment justified. The cap on wage rates

⁵Under an interim contract extension issued pending award under the instant RFP, Am-Pro is currently paying guards at the DOL rate, but apparently only because DOL raised its wage determination rate substantially immediately before the extension was to take effect.

will protect DOE from the risk of paying higher labor costs. As to attrition, however, Wackenhut agreed only to absorb costs that it would incur (such as the cost of additional uniforms, training, and medical examinations). Wackenhut did not offer to cap attrition, nor could it plausibly do so. It merely committed itself not to request reimbursement for costs incurred due to attrition above 15 percent. It did not offer to absorb the associated additional costs that the agency would incur, such as the cost of security checks, nor, more importantly, did it guarantee that security at DOE would not be disrupted by high turnover of guards. We do not view DOE's concern in this regard as inconsistent with our decisions holding that effective cost caps should be considered to protect the government's interest for purposes of calculating probable cost.

While Wackenhut clearly disagrees with the agency's judgment about the likely impact of paying minimum DOL rates under this contract on attrition, the record does not indicate that the agency's judgment was unreasonable or inconsistent with the terms of the solicitation. Although Wackenhut may be confident that it can hold attrition low, even while using the DOL wage determination rates as its starting wage levels, its view represents no more than a disagreement with the agency's judgment.⁶ We conclude that the SSO had a reasonable basis, consistent with the RFP criteria, for the lower score that he assigned to Wackenhut's technical proposal.

The second area of dispute is the SSO's decision to increase Am-Pro's technical score in the area of key personnel qualifications. The SEB had downgraded Am-Pro's proposal because its proposed general manager lacked 2 months of the 3 years required in "managing a project of similar scope, size, and complexity to this Contract." The SSO found that, because more than 2 months had passed between the SEB's scoring and his review, the criticism was no longer justified. As a result, and because he considered Am-Pro's proposed general manager to be well qualified for the position, he increased Am-Pro's score in this area.

⁶Wackenhut argues in the alternative that it could absorb the cost of paying employees more than the DOL rate, if doing so was necessary in order to perform, and the cap on labor costs would ensure that the agency would not be at risk for the associated additional costs. The agency contends, reasonably in our view, that such a scenario, which is directly contrary to Wackenhut's stated expectation of the risk it was likely to need to bear, could lead to cost pressures so significant as to endanger successful performance.

Wackenhut does not dispute that the SSO could reasonably take into account the time that had passed since the SEB conducted its review. In Wackenhut's view, however, both the SSO and the SEB assumed without justification that an earlier block of 20 months in the proposed general manager's experience was spent "managing a project of similar scope, size, and complexity." The protester concedes that the individual's resume (which was submitted with Am-Pro's proposal) stated that he had been the director of operations at the Department of Energy headquarters during that time, had been responsible for protective force operations at the agency's headquarters, and had supervised 3 managers, 23 lieutenants, 3 sergeants, and 160 security inspectors. According to the protester, this did not establish that the individual had managed the project, and Wackenhut alleges that, in fact, someone else had done so.

We view as unobjectionable the agency's evaluation of the experience of Am-Pro's proposed general manager. The resume indicated that the individual had experience which the agency reasonably understood to satisfy the requirement for management of a project of similar scope, size, and complexity, notwithstanding the absence of those precise words in the resume and even if, as the protester alleges, another individual was technically the project manager.

Wackenhut's underlying concern here appears to be that the agency treated the two competing proposals unequally. The agency downgraded Wackenhut's proposed director of operations because that individual's resume did not demonstrate the requisite experience. According to Wackenhut, the agency knew that the proposed individual possessed the required experience, and, since the agency decided to give Am-Pro credit for its general manager's experience, regardless of the language used in the resume, it was also required to give Wackenhut credit for its director of operations' actual experience.

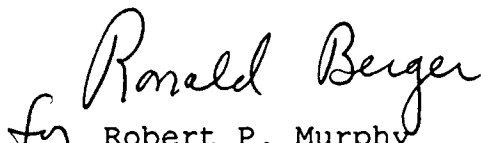
DOE responds that the record demonstrates that it treated offerors equally. We agree. The agency evaluated both offerors' personnel on the basis of the resumes submitted. Wackenhut's proposed director of operations was downgraded because of a lack of experience shown on her resume, and the protester has not shown that the agency unreasonably interpreted the resume in this regard. As for the proposed general managers, the individuals proposed by both Wackenhut and Am-Pro were given credit for experience managing projects, so long as the resumes indicated that they had held a senior position managing a project similar to this procurement, even if that position was not the most senior position on the project. That approach was not contrary to

the RFP requirement or otherwise unreasonable, and it was applied equally to both offerors. Accordingly, this protest ground is denied.

Finally, Wackenhut challenges the reasonableness of the SSO's cost/technical tradeoff decision. In making such decisions, agency officials have broad discretion, and the extent to which technical quality may be sacrificed for cost, or vice versa, is governed by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., supra. While the selection official's judgment must be documented in sufficient detail to show it is not arbitrary, KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447, a source selection official's failure to specifically discuss the cost/technical tradeoff in the selection decision document does not affect the validity of the decision if the record shows that the agency reasonably determined that a higher technically scored proposal was (or was not) worth the additional cost associated with that proposal. See McShade Gov't Contracting Servs., B-232977, Feb. 6, 1989, 89-1 CPD ¶ 118.

Here, the SSO documented his concern that Wackenhut's lower technical score reflected a substantial risk to the agency, in terms of both additional costs and deterioration in the quality of performance. Indeed, as discussed above, the primary issue in the protest is the reasonableness of the SSO's documented concern that the benefit of Wackenhut's lower probable cost would be outweighed by the high attrition which the agency believes the low labor rates will cause. On the basis of that concern, he determined that the technical advantages of Am-Pro's proposal justified paying the associated cost premium. The protester has not shown that this determination was unreasonable or inconsistent with the RFP evaluation criteria. We conclude that the cost/technical tradeoff analysis was reasonable, and the resulting selection of Am-Pro's proposal was unobjectionable.

The protest is denied.


 for Robert P. Murphy
 General Counsel